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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,703	10/13/2005	Motoo Sumida	47237-0528	5291

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EXAMINER	
LILLING, HERBERT J	

ART UNIT	PAPER NUMBER
1657	

MAIL DATE	DELIVERY MODE
11/08/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/527,703	SUMIDA ET AL.	
	Examiner	Art Unit	
	HERBERT J. LILLING	1657	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 March 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *1-30* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *11 March 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

1. Receipt is acknowledged of a preliminary amendment and a prior art information disclosure statement filed March 11, 2005 for this application, which is a 371 of PCT/JP03/11744, filed September 12, 2003 which claims benefit to JP 2002-268720 filed September 13, 2002.

2. Claims 1-30 are pending in this application.

3. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The record for this application clearly indicates that the following inventions are not so linked as to form a single general inventive concept under PCT Rule 13.1 in view of the following submitted in the PCT:

> "D1 destroys the novelty of claims 1,3, 4, 6, 7, 9-15, 17, 19, 21,23, 24 and 26-3{3.
> D2 is an obstacle to the novelty of claims 1,3, 4, 9-13, 17, 21,23 and 27-30.
> D4 is novelty destroying for claims 1,3-5, 9-14, 17, 18, 21-25 and 27-30.
> D5 is an obstacle to the novelty of claims 1,3-5, 10-14, 17, 18, 21,22, 24, 25 and 27-30."

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-9, drawn to a production process for a transesterified oil/fat or triglyceride, by transesterification of 50-100 parts by weight of one or more fungus-produced oils/fats or triglycerides containing at least 20% of polyunsaturated fatty acids containing 20 or more carbons and two or more double bonds and 0-50 parts by weight

of one or more vegetable oils/fats or triglycerides, using a 1,3-position specific type lipase.

Claims 21-23 will be examined with this Invention.

Group II, claim(s) 10-16, drawn to a transesterified oil/fat or triglyceride product which is obtained by a process for a transesterified oil/fat or triglyceride, by transesterification of 50-100 parts by weight of one or more fungus-produced oils/fats or triglycerides containing at least 20% of polyunsaturated fatty acids containing 20 or more carbons and two or more double bonds and 0-50 parts by weight of one or more vegetable oils/fats or triglycerides, using a 1,3-position specific type lipase.

Claim 22 will be examined with this Invention.

Group III, claim 17, drawn to a second product which is a transesterified oil/fat or triglyceride containing at least 20% of polyunsaturated fatty acids containing 20 or more carbons and two or more double bonds, and which contains at least 40% of triglycerides with one residue of polyunsaturated fatty acids containing 20 or more carbons and two or more double bonds in the molecule and/or no more than 4.0% of triqlycerides with 3 residues of the same polyunsaturated fatty acids containing 20 or more carbons and two or more double bonds.

Group IV, claim 18, drawn to a third product which is an oil/fat or triglyceride containing at least 20% of arachidonic acid, and which contains at least 40% of triglycerides with one residue of arachidonic acid in the molecule and/or no more than 4.0% of AAA.

Group V, claim 19, drawn a fourth product which is an oil/fat or triglyceride containing at least 20% of dihomo-.gamma.-linolenic acid, and which contains at least 40% of

triglycerides with one residue of dihomo-.gamma.-linolenic acid in the molecule and/or no more than 4.0% of DDD.

Group VI, claim 20, drawn to a **fifth product** which is an oil/fat or triglyceride containing at least 20% of mead acid, and which contains at least 40% of triglycerides with one residue of mead acid in the molecule and/or no more than 4.0% of MMM.

Group VII, claim 25-26, drawn to a **sixth product** which is a transesterified oil/fat or triglyceride containing at least 1 wt % of each of a triglyceride containing arachidonic acid (A) and medium-chain fatty acid (Z) as constituent fatty acid, ZAZ, wherein ZAZ is a triglyceride with 2 residues of medium-chain fatty acid and one residue of arachidonic acid, wherein arachidonic acid is bound to the position 2, and ZZA, wherein ZZA is a triglyceride with 2 residues of medium-chain fatty acid and one residue of arachidonic acid, wherein arachidonic acid is bound to the position 1 or 3.

Group VIII, claim 27, drawn to a human nutritive comprising the product of Invention II.

Group IX, claims 28-9, to a food comprising the product of Invention II.

Group X, claim 30 drawn to an animal feed comprising the product of Invention II.

4. As indicated above, the above inventions are not so linked as to form a single general inventive concept under PCT Rule 13.1. In addition, because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification for the specific inventions drawn to 435/134, Class 426 for the invention drawn to a food; class 424 for the human nutritive composition as well as separate classifications for the products which are in class 514/560 .

In addition, because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), and because the inventions have acquired a separate status in the art due to their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Each of the products would also require a separate search and examination due to the fact that each of the products is drawn to different structures, which would be a very serious burden to computerized search the tremendous number of products within the scope of the different inventions.

5. This application contains claims directed to the following patentably distinct species:

A. **Whereby the product produced is:**

a. 20% of polyunsaturated fatty acids containing 20 or more carbons and two or more double bonds-please specify the generic structure.

Ai arachidonic acid;

Aii dihomo-gamma-linolenic acid

Aiii mead acid

b. omega 6 series PUFA:

bi. Specify the structure.

c. omega 9 series PUFA;

ci. Please specify the structure.

B. Whereby the second vegetable oils/fats or triglycerides is:

a. specify the structure.

C. Whereby the the transesterification uses 1,3-position specific type lipase-produced by:

ai Rhizopus delemar

aii Rhizopus niveus

aiii Rhizomucor miehei

aiv Rhizopus oryze.

Applicant will be required to submit the specific structure or sequence or the product by process for the enzyme.

Applicant will have to submit the full structure for the claimed products.

The species are independent or distinct because each of the structures or processes is separate and patentably distinct from each other. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic to all of the above inventions.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

6. In accordance with this Tech Center Policy based on above restriction containing product claims and process claims, this Examiner will rejoin any non-elected process claims upon the election of a product claim which is subsequently is found allowable in view of the following guidelines:

F.P.: Ochiai/Brouwer Rejoinder form paragraph

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims that depend from or otherwise include all the limitations of the allowable product claim will be rejoined in accordance with the provisions of MPEP § 821.04. **Process claims that depend from or otherwise include all the limitations of the patentable product** will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103, and 112. Until an elected product claim is found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowed product claim will not be rejoined. See "Guidance on Treatment of Product and Process Claims in light of *In re Ochiai, In re Brouwer* and 35 U.S.C. § 103(b)," 1184 O.G. 86 (March 26, 1996). Additionally, in order to retain the right to rejoinder in accordance with the above policy, Applicant is advised that the process claims should be amended during prosecution either to maintain dependency on the product claims or to otherwise include the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.**

Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

7. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Lilling whose telephone number is 571-272-0918 and Fax Number is **571-273-8300**. or SPE Jon Weber whose telephone number is 571-272-0925. Examiner can be reached Monday-Friday from about 7:30 A.M. to about 7:00 P.M. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

H.J.Lilling: HJL
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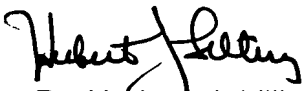
Art Unit **1657**
November 1, 2007



Dr. Herbert J. Lilling
Primary Examiner
Group 1600 Art Unit 1657